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## MEMORANDUM

**TO:** Committee on Legal Services

**FROM:** Michael Dohr, Office of Legislative Legal Services

**DATE:** December 1, 2020

**SUBJECT:** Rules of the State Board of Education, Department of Education, concerning administration of the public school transportation fund, 1 CCR 301-14 (LLS Docket No. 200440; SOS Tracking No. 2020-00263).<sup>1</sup>

### Summary of Problem Identified and Recommendation

Section 22-51-105 (1), C.R.S., requires an entity desiring reimbursement from the public school transportation fund to certify the necessary information for reimbursement on or before August 15, but Rule 2251-R-2.02(1) allows the Department of Education to extend the deadline to September 15. **Because Rule 2251-R-2.02(1) conflicts with the statute, we recommend that Rule 2251-R-2.02(1) of the rules of the State Board of Education (state board) concerning administration of the public school transportation fund not be extended.**

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<sup>1</sup> Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I), C.R.S., the rules discussed in this memorandum will expire on May 15, 2021, unless the General Assembly acts by bill to postpone such expiration.

## Analysis

**Statute sets a specific deadline for filing for reimbursement from the public school transportation fund; therefore, the state board cannot create an extension to that deadline by rule.**

Section 22-51-105 (1), C.R.S., requires an entity seeking reimbursement from the public school transportation fund to certify the necessary information to determine reimbursement entitlement on or before August 15 of each year.

**22-51-105. Certifications by school boards, governing boards, and facility schools - rules.** (1) **On or before August 15 of each year**, the school board of each school district entitled to and desiring reimbursement under this article 51, the state charter school institute board, and each facility school entitled to and desiring reimbursement under this article 51 shall certify to the state board of education, on forms provided by the commissioner of education, any information the board deems necessary to determine the reimbursement entitlement of the district, the institute, or the facility school. The information includes, but is not limited to, the total amount of the school district's, institute's, or facility school's current operating expenditures for pupil transportation during the preceding entitlement period, the total number of miles traveled and the total number of pupils transported on the pupil enrollment count day, as defined in section 22-54-103 (10.5), during the preceding entitlement period by vehicles operated by or for the school district, the institute, or the facility school in providing pupil transportation, and the transportation route descriptions in effect on the pupil enrollment count day. **(emphasis added)**

Rule 2251-R-2.02(1) gives the Department of Education the authority to grant an extension of the deadline for the entity to submit the necessary reimbursement information until September 15.

### **2251-R-2.00 General**

2.02(1) A district annually shall submit a form CDE-40 no later than August 15. Upon request by a school district, CDE may grant an extension of this submission until September 15.<sup>2</sup>

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<sup>2</sup> CDE-40 is the Public School Transportation Fund Reimbursement Claim form, a sample of which is available at [https://www.cde.state.co.us/cdefinance/cde40fy118-19\\_example\\_form](https://www.cde.state.co.us/cdefinance/cde40fy118-19_example_form) (accessed November 18, 2020).

The state board is tasked with promulgating rules for the administration of the public school transportation fund, but that authority does not include creating an extension to the statutory filing deadline of August 15.

**22-51-108. Rules.** The state board of education shall promulgate rules for the administration of this article. Such rules shall include reasonable and adequate standards of safety in the maintenance and operation of buses, the maintenance of records by school districts, the state charter school institute, and facility schools, the length of bus routes, the number of children to be transported in the various types of buses, and such other rules pertaining to pupil transportation as will promote the welfare of the students and afford reasonable protection to the public.

This rulemaking authority covers safety standards, record keeping, length of bus routes, the number of children that can be transported in various bus types, and rules pertaining to pupil transportation that promote the welfare of the students and afford reasonable protection to the public. Nothing in this rulemaking authority provides authority to extend the deadline for applying for reimbursement. Without specific rulemaking authority to create an extension to the statutory deadline, Rule 2251-R-2.02(1) conflicts with statute by permitting an extension of the statutory deadline.

## **Recommendation**

We therefore recommend that Rule 2251-R-2.02(1) of the rules of the State Board of Education concerning the administration of the public school transportation fund not be extended because Rule 2251-R-2.02(1) conflicts with statute.